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PERSONS — RIGHT TO DOWER — SECRET ANTE-NUPTIAL CONVEYANCE. — A widower, before a second marriage, made a voluntary conveyance of land to an adult daughter by his former wife, without the knowledge of his fiancée. *Held*, that the second wife may claim dower in the land conveyed. *Deke v. Huenkemeier*, 260 Ill. 131, 102 N. E. 1059; *McAulay v. McAulay*, 79 S. E. 785 (S. C.).

For a discussion of the principles involved, see NOTES, p. 474.

PHYSICIANS AND SURGEONS — SURGEON'S LIABILITY FOR NEGLIGENCE OF HOSPITAL NURSE AFTER OPERATION. — A nurse attached to the hospital in which the defendant had operated on the plaintiff, negligently failed to remove a gauze drain. The plaintiff sues the defendant surgeon. *Held*, the surgeon is not responsible. *Hunner v. Stevenson*, 46 Chi. Leg. N. 163 (Md.).

A specialist is not an absolute insurer. He is held to that degree of skill and knowledge ordinarily possessed by physicians in similar localities who have devoted special study to the disease, having regard to the existing state of scientific knowledge. *Baker v. Hancock*, 29 Ind. App. 456, 63 N. E. 323. The position of a specialist who attends a hospital only to operate is that of independent contractor. *Harris v. Fall*, 177 Fed. 79, 85. During an operation he is in control. *Hillyer v. St. Bartholomew's Hospital*, [1909] 2 K. B. 820. For the negligence of the attendants while under his direction he should be responsible. *Jones v. Scullard*, [1898] 2 Q. B. 565; *Wyllie v. Palmer*, 137 N. Y. 248, 33 N. E. 381. Moreover, if by reason of his unique knowledge he ought to know that some unusual treatment would be advisable, his failure to have it applied would seem to be a breach of that duty of care up to which he is held. After the operation the care of the patient devolves on the hospital only. *Harris v. Fall*, *supra*; *Baker v. Wentworth*, 155 Mass. 338, 29 N. E. 589. The principal case is in accord with this view. But even after the operation, if the specialist ought to know that extraordinary measures would be expedient, it seems that he should be responsible for injuries resulting from his failure so to direct.

RES JUDICATA — PERSONS CONCLUDED — CO-DEFENDANTS: DECREE IN FAVOR OF ONE CO-DEFENDANT AS CONCLUSIVE IN LATER SUIT BY OTHER CO-DEFENDANT. — In a former suit a debtor and three co-sureties had been sued together. Two of the sureties were there found not liable and the third paid the whole debt. To a suit by the latter for contribution, the two former pleaded the previous suit as a bar. *Held*, that the question of their original liability was not *res judicata*. *Central Banking & Security Co. v. United States Fidelity & Guaranty Co.*, 80 S. E. 121 (W. Va.).

The principles of *res judicata* are applied in two classes of cases. See *Cromwell v. County of Sac*, 94 U. S. 351, 352. In one class, the courts refuse to allow the same cause of action to be litigated again. *Young v. Farwell*, 165 N. Y. 341, 59 N. E. 143. But the doctrine of *res judicata* also includes the rule that any material point actually decided in one suit cannot be re-litigated where the same parties are opposed to each other in both suits. *Wright v. Griffey*, 147 Ill. 496, 35 N. E. 732; *Lynch v. Swanton*, 53 Me. 100. There seems no reason for a different rule when the parties were co-defendants in the first suit, if, as in the case of co-sureties, the judgment in favor of one defendant could have been appealed against by the losing co-defendant on the ground that his own liability was thereby increased. *Ruff v. Montgomery*, 83 Miss. 185, 36 So. 67. Policy requires that a question once judicially passed upon be final as to all parties who had an opportunity to litigate that question. In the principal case it is necessary for the plaintiff to prove that he and the defendants were liable as co-sureties. *Bulkeley v. House*, 62 Conn. 459, 26 Atl. 352. *Robinson v. Boyd*, 60 Oh. St. 57, 53 N. E. 494. If the former case had decided they were co-sureties, this finding would be evidence in the suit for

contribution, since the person sued for contribution has already had an opportunity to litigate the question. See *Lawrence v. Stearns*, 79 Fed. 878; *Love v. Gibson*, 2 Fla. 508. The same reasoning requires that the defendants be allowed to take advantage of the former finding that the relation of co-surety did not exist. *Cross v. Scarboro*, 6 Boxt. (Tenn.) 134; *Ledoux v. Durrive*, 10 La. Ann. 7. *Contra*, *Koelsch v. Mixer*, 52 Oh. St. 207, 39 N. E. 417.

RESTRAINT OF TRADE — COMBINATION OF OWNERS OF SEPARATE COPYRIGHTS TO FIX RESALE PRICE — EFFECT OF COPYRIGHT STATUTE. — The publishers of many copyrighted books combined to boycott all jobbers and book-sellers who should not maintain the net prices of copyrighted books fixed by the individual members of the combination. *Held*, that there is an illegal restraint of trade. *Straus v. American Publishers' Association*, 34 Sup. Ct. 84.

This decision limits in another way the powers granted by the copyright and patent statutes to control copyrighted and patented articles after they have been sold. The holder of a copyright cannot limit the resale price by notice to the purchaser. *Bobbs-Merrill v. Straus*, 210 U. S. 339, 28 Sup. Ct. 722. The rights of a patentee are similarly restricted. *Bauer & Cie v. O'Donnell*, 229 U. S. 1, 33 Sup. Ct. 616. See 27 HARV. L. REV. 73. The public policy against restraints on the alienation of chattels is in such cases apparent. See 26 HARV. L. REV. 640. By a decision which seems out of harmony with the spirit of these decisions, the Supreme Court has held, however, that a patentee may by notice require that a patented article should be used only with certain unpatented goods. *Henry v. A. B. Dick Co.*, 224 U. S. 1, 32 Sup. Ct. 364. On the other hand, contracts between the owner of a copyright or patent and with retailers, not to resell the copyrighted or patented articles below a certain price, have been held good in the lower courts. See 26 HARV. L. REV. 640; 19 HARV. L. REV. 125. Single contracts are obviously not objectionable but the legality seems doubtful when there is a system of agreements to limit the resale price. That such agreements by patentees are not protected by the patent statute has been suggested by the Supreme Court. *Standard Sanitary Mfg. Co. v. United States*, 226 U. S. 20, 33 Sup. Ct. 9. See 25 HARV. L. REV. 454. It is broadly stated in the principal case that the patent and copyright statutes are not intended to authorize agreements in restraint of trade. Probably the same reasoning would be applied to hold improper a system of agreements to control the resale price in the case of patented or copyrighted articles as in the case of goods made under a secret process. See *Dr. Miles Medical Co. v. Park & Sons*, 220 U. S. 373, 31 Sup. Ct. 376. See 24 HARV. L. REV. 244, 680. In holding that combinations by owners of several *separate* copyrights to control the retail prices of the copyrighted article are not protected by the copyright statute, the principal case seems clearly right. For a further discussion of the principles involved, see 19 HARV. L. REV. 125.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO THE USE OF PROPERTY — WHERE THE RELATION OF "DOMINANCY" AND "SERVIENCY" IS LACKING. — The plaintiff conveyed a certain lot in fee, the grantee covenanting for himself, his heirs and assigns, not to erect any flat or tenement building thereon within a period of twenty years. The covenantor later assigned the land to the defendant with notice, but without restrictions. At no time did the plaintiff own any land in the neighborhood aside from that conveyed. The defendant having started to construct an apartment house, the plaintiff seeks an injunction. *Held*, that the injunction be granted. *Van Sand v. Rose*, 103 N. E. 194 (Ill.).

The court proceeds on the ground of enforcing an equitable servitude created by virtue of the restrictive covenant. There is no doubt that when adjoining lands are intended to be benefited, a restrictive covenant is enforceable against an assignee with notice. *Tulk v. Moxhay*, 2 Phillips 774. But this